

LABOUR DEPARTMENT

The 8th September, 1975

No. 9880-4Lab-75/27486.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Dalmia Dadri Cement Ltd., Charkhi Dadri.—

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA
FARIDABAD

Reference No. 85 of 1965

between

The workmen and the management of M/s Dalmia Dadri Cement Ltd., Charkhi Dadri.

*Present :—*Shri Bhim Sain for the Men's Union.

Shri Rameshwar Dayal for the management.

AWARD

By order No. 501-3F-III-Lab-1-65/25019, dated 17th September, 1975 read with amended order No. 721-SF-3-Lab.-1-65/33040, dated 23rd November, 1965 of the Governor of Punjab the following disputes between the management of M/s Dalmia Dadri Cement Ltd., Charkhi Dadri and its workmen were referred for adjudication to this Tribunal, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

1. Whether the workmen are entitled to the profit bonus ? If so, what should be the quantum and terms and conditions of its payment ?
2. Whether the workmen are entitled to the grant of Production Bonus ? If so, with what details ?
3. Whether the workers who are not provided accommodation in the quarters of the factory, are entitled to electricity allowances ? If so, with what details ?

The parties put in their respective pleadings. The demands of the workmen were contested by the management giving rise to eight issues, the last three issues pertaining to the terms of reference. However, an amicable settlement was arrived at between the parties with regard to items Nos. 1 and 2 of the terms of reference stated above and an interim award was accordingly given with regard to these two demands on 4th September, 1970.

In view of the above, the only issue that arises for consideration in the case is issue No. 8 as per term No. 3 of the reference, the remaining issues having become redundant.

Two witnesses have been examined on behalf of the workmen with regard to their claim for electricity allowance, namely Sarvshri Y.D. Sharma, General Secretary and Daya Kishan Gupta, Secretary of the Cement Factory Workers Union. They have deposed that there are only 200 quarters in the factory and about 500 workmen have not been provided with residential quarters although a rent allowance of Rs 7.50 P.M. is paid to them. It has further been deposed that the workmen living in the quarters of the factory are given free electricity to the extent of Rs 4 or Rs 5 P.M. but the workmen who live outside the factory premises in their private houses are not given any electricity allowance although the services conditions of all the workmen are similar. It has further deposed that electricity allowance has been given to the workers living in the quarters of the factory under an award of the Industrial Tribunal in reference No. 45 of 1961.

The management has also examined two witnesses including Sarvshri V. Kaushik, Manager and Matu Ram, Clerk. But their statements are silent on the above point regarding the demand of the workmen for electricity allowance. They have only deposed with regard to the aforesaid settlement in respect of the two demands covered by items Nos. 1 and 2 of the order of reference.

I have heard the arguments advanced on both sides and gone through the facts on record including the copy of award in reference No. 45 of 1961 relied upon by the workmen.

The main argument advanced on behalf of the management is that there was no contract of service between the management and the workmen concerned for giving them the electricity allowance claimed in the case. It has further been argued that the Standing Orders of the company by which the workers are governed are also silent on this point. There is no doubt that the management has not entered into any agreement with the present workmen to give them the electricity allowance nor have I been referred to any settlement or award between the parties providing

payment of electricity allowance to the workers living in their bouses outside the quarters of the factory. However, on the facts established in the case their claim does not appear to be unreasonable. It has come in evidence that the workmen residing in the residential quarters of the factory are getting free electricity upto the value of Rs 4 and Rs 5 P.M. under the award of the Tribunal mentioned above. It is all the more reasonable that the workers who have not been given the benefit of residential quarters in the factory should at least get this benefit of electricity allowance on the same terms and conditions as given to the other workers living in the quarters of the factory.

It has been argued on behalf of the management that the workers are living at different place and it would be well nigh impossible to check and assess the electric charges paid by each and every worker. The contention is devoid of force. The workers have to be paid electricity allowance at Rs 4 or Rs 5 P.M. according to their grades in terms of the award of the Tribunal referred to above.

It would thus appear that the claim of the workmen concerned for the grant of electricity allowance is well-founded. The management has not been able to satisfy me to the contrary. The issue involved is, therefore, decided in favour of the workmen concerned and against the management and it is held that they are entitled to the payment of the electricity allowance claimed by them on the same terms and conditions as per the award in reference No. 45 of 1961 referred to above, and the award in the instant case is accordingly made. There would, however, be no order as to costs.

The 9th October, 1974.

O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1202, dated Faridabad, the 9th October, 1974

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

The 9th October, 1974.

O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 9th September, 1975

No. 10084-4Lab-75/27642. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the Management of M/s Electronics Limited, New Industrial Township Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 94 of 1974

Between

SHRI DEVI SARAN WORKMAN AND THE MANAGEMENT OF M/S ELECTRONICS
LIMITED NEW INDUSTRIAL TOWNSHIP, FARIDABAD.

AWARD

By order No. ID/27175, dated 22nd July, 1974, the Governor of Haryana, referred the following dispute between the management of M/s Electronics Limited, New Industrial Township, Faridabad and its workman Shri Devi Saran to this Tribunal, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947,

Whether the termination of services of Shri Devi Saran was justified and in order? If not, to what relief is he entitled?

Usual notices of the reference having been issued to the parties, they appeared before this Tribunal. The workman alleged,—*vide* the statement of his claim that 8th of February, 1974 being a lay off day and 9th of February, 1974 being a weekly holiday, he had proceeded to his native place in U.P. where he fell sick and that he sent an application for grant of leave from 10th February, 1974 to 18th February, 1974 and that he did not receive any intimation in respect of the sanction of the leave or rejection of his application. He stated that he presumed under these circumstances that his leave had been sanctioned and that when he reported for duty on 19th February, 1974 at 8 a.m., he was not allowed to enter the factory premises and was informed that his name had been struck off from the rolls of the employees of the factory. He set up a case that the action of the management in striking off his name from the rolls of the employees of the factory on the ground of his absence from duty from 10th February, 1974

to 18th February, 1974 was illegal and unjustified and violated the provisions of the standing orders. He further alleged that the certified standing orders of the management in respect of the removal of his name on account of absence from duty were illegal and invalid and could not be given effect and that the same violated the principals of natural justice.

The management,—*vide* written reply filed on record, admitted the factum of the striking off the name of the workman from the rolls of the employees of the factory on the ground of his continued absence from duty from 10th February, 1974 to 18th February, 1974 without sufficient cause and of the failure of the workman to explain this absence to their satisfaction. They however denied the receipt of any application from the workman for grant of leave. They pleaded that the certified standing orders as applicable to their employees were valid in all respects and the Tribunal could not legally go into the validity and legality of the certified standing orders. They stated that the services of the workman stood automatically terminated for his being absent without leave for more than 7 consecutive days under the Certified Standing Orders and that the registered letter sent to the workman with a notice informing him of the action taken by them were received back with an endorsement of refusal of the workman to receive the same. The management further resisted the claim of the workman for reinstatement on the ground that the demand raised by him did not constitute an industrial dispute.

The workman reiterated the allegations made by him in his statement of claim, while controverting the pleas of the management,—*vide* replication filed by him with the result that following issues were framed on pleas of the parties,—*vide* order, dated 6th February, 1975:—

- (1) whether the present reference is not covered by section 2-A of the Industrial Disputes Act, 1947 ? If so, with what effect ?
- (2) Whether the termination of services of Shri Dev Saran was justified and in order ? If not, to what relief is he entitled ?

I have heard the authorised representatives of the parties on the aforesaid issues with reference to the evidence led by them. I decide the issues as under :—

Issue No. 1.—The points in dispute between the parties relate to the automatic termination of services of the workman, substantially as a result of his alleged continued absence from duty without sufficient cause and as such constitute an industrial dispute within the ambit of section 2-A of the Industrial Disputes Act, reproduced *in extenso* as under, as was held in 1975-Labour and Industrial Cases-338 by Karnataka High Court in workmen Pandavapura Sahakaru Sakkarc Kharkhana, Pandavapura Petitioner V. Presiding Officer, Labour Court, Mandya and another Respondents relied on by the management itself, with an observation that the substance of the dispute has to be gone into by the Labour Court and not the mere form to it, and the real dispute between the parties in such a case was whether the workman under the relevant standing orders has automatically lost his lien on his remaining absent or whether the management terminated his services.

Section 2A of Industrial Disputes Act :—

“Whether any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute not withstanding that no other workman nor any union of workmen is party to the dispute”.

I, therefore, decide this issue against the management.

Issue No. 2.—It seems necessary to reproduce standing orders clause 8(g) of the Certified Standing Orders of the respondent for deciding this issue. It lays down as under :—

“Workman who absents himself without leave for seven consecutive days or more will be deemed to have left the services of the company without notice thereby terminating his employment, and in such a case the employment will be automatically terminated irrespective of its communication by the Company to the workman concerned, if workman within four days thereafter, offers an explanation to the satisfaction of the Departmental Head, his absence will be counted as leave without pay and he may also be liable to be posted on similar or any other inferior job carrying lower basic wages or being posted in the Training and Allocation Centre on lower basic rate. If, however, no such explanation is offered within the time aforementioned, the workman will not be entitled to be excused even though his absence may have been due to illness or some other valid reason whatsoever.”

It would appear from the plain reading of the aforesaid provisions of the Standing Orders that a continued absence from duty without leave of a workman by itself constituted an automatic termination of services with a qualification that in case the workman within 4 days thereafter offered an explanation to the satisfaction of the Departmental Head, for his absence, it shall be counted as leave without pay and he would be liable to be posted on similar or any other inferior job and that in case of want of such explanation within the time prescribed, the workman could not be held entitled to be excused, even though his absence was due to illness.

It shall thus have to be seen and determined, if the workman remained absent from duty for a consecutive period of 7 days or if he offered an explanation in respect of his illness within the prescribed time.

The management in this connection examined Shri Dharam Pal Basin, their Receipt Clerk as M.W.1, Shri R. L. Mata their time keeper Ex. M. W. 2 and Mulkh Raj their Personnel Officer as M.W. 3. Shri Dharam Pal deposed with reference to the receipt register brought by him in court that no letter or application of the workman Shri Devi Saran was received in the office in respect of his prayer for grant of leave or in any other connection, during the period from 11th February, 1974 till 28th February, 1974. Shri R. L. Mata gave out with reference to the attendance card of the workman, that the latter remained absent from duty from 10th February, 1974 onwards and that his services were terminated on 18th February, 1974 under clause 8(g) of the Certified Standing Orders copy Ex. M-2. Shri Mulkh Raj stated that letter Ex. M-3 was sent to the workman intimating him the action taken by the management. Nothing substantial could be brought in cross examination of these witnesses, leading me to doubt their testimony.

As against the aforesaid evidence the workman examined Shri Hem Chand, W.W. 2 besides making his own statement as W.W. 1. Shri Devi Saran deposed that he having gone to the house of his father-in-law on 8th February, 1974, a lay off day, he fell ill there and received medical treatment from Dr. Sis Pal Chawhan who granted him a medical certificate dated 16th February, 1974 Ex. W-5 certifying his illness and recommending him rest for the period from 10th February, 1974 to 18th February, 1974 and that he thereafter obtained another certificate, dated 18th February, 1974 Ex. W-4 from the Medical Officer. He continued to say that he had sent an application for grant of leave to the management on 10th February, 1974 and that one Shri Rajbir Sharma posted in Post Office Soi under certificate of posting Ex. W-3 and that he retained copy of application Ex. W-2. He added that he came to the premises of the factory on 19th February, 1974 at 8 A.M. with a certificate Ex. W-4 to attend to his duty and was not allowed to enter the factory and that he had been informed that his services had been terminated. He stated that his attendance card Ex. M-1 was taken from him by the Personnel Officer who marked him absent in the same.

Shri Hem Chand Brother of the wife of Shri Devi Saran examined as W.W. 2 testified that Devi Saran had come to his house to take his family and that he was taken ill and suffered from Cold, cough and fever. He added that Dr. Sis Pal Singh treated him medically. This is all the evidence led by the workman.

It is significant to note that the workman did not examine Dr. Sis Pal Singh Chawhan, the author of certificates Ex. W-4 and W-5 dated 16th February, 1974 and 18th February, 1974 respectively. These certificates thus remained unproved. I do not agree with the learned authorised representative for the workman, that these could be taken as proved even without examination of Dr. Sis Pal Singh by the workman and that the provision of Indian Evidence Act did not apply to the case. The authority reported as AIR-SC-1957, page 882 relied on by him, has no application to the case in as much as this did not relate to proceeding before an Industrial tribunal and was in respect of an administrative enquiry held by the departmental head.

The failure of the workman to examine Dr. Sis Pal Singh an important witness in the case leads to a presumption against him, that the certificates Ex. W-4 and W-5 are not genuine and are on the other hand fabricated. There is otherwise inherent evidence contained in the certificate Ex. W-4 of its being a fabricated document. For instance it is found stated therein that Shri Devi Saran was fit to resume his duty in Government service and that he had examined copies of medical certificates and statements of the case on which leave had been granted and had taken these into consideration in arriving at his decision. Shri Devi Saran admittedly was neither in Government service nor he had produced Medical certificate and statement of the case on which leave had been granted to him. The question of Dr. Sis Pal Singh having examined these documents thus did not arise and an irresistible conclusion is that both the documents Ex. W-4 and W-5 are faked and fabricated. Coming to the determination of another important question relating to the allegations of the workman having sent an application for grant of leave on 10th February, 1974. He admittedly did not post the envelop containing the application. Shri Rajbir Singh alleged to have done it is said to have died and is not available for evidence. The application is alleged to have been sent from post office Soi when there was admittedly a Post Office in Pahasu where he had fallen ill. The copy of the application and the postal certificate were brought on record for the 1st time on 6th March, 1975 without any explanation of the non-production thereof at an early stage. The reason stated by the workman that village Soi was nearer to the residence of his father-in-law than the Post Office of village Pahasu is unconvincing and remained uncorroborated. Even Shri Hem Chand was not put any question in that connection leading to a presumption of the falsity of the case of the workman.

I, thus for all the aforesaid reasons hold the evidence of Shri Devi Saran and Hem Chand in respect of the storey of illness of the former and sending of the application by him on 10th February, 1974 to the management for grant of leave, as entirely false. I on the other hand rely on the statement of Shri Dharam Pal, and R. L. Mata that the workman remained absent during the period from 10th February, 1974 to 18th February, 1974 without grant of leave or sufficient cause and that no application praying for grants of leave was received in the office.

This brings me to the determination of another important question relating to the Vices of the Certified Standing Orders of the respondent. It has been held in 1969 (II) LLJ-698 and 1973 Labour Industrial cases page 1008 that validity of the certified Standing Orders can be adjudicated upon by the Industrial Tribunal. It was further held in 1970-Labour Industrial Cases page 1008, that the Certified Standing Orders not falling under

any of the items of schedule appended to the Industrial Employment Standing Orders Act, 1946 hereinafter referred to as an Act are illegal liable to be ignored. There can be no dispute with the principle of law enunciated in the aforesaid authorities. The question for consideration, however, in the instant case would be as to whether paragraph 8(g) of the certified Standing Orders as reproduced above is ultravires of the aforesaid Act. Item 8 of the schedule appended to the act relating to termination of employment and the notice thereof to be given by the employer and workman, well covers the facts of the instant case as was held in 1975-Labour and Indian Cases-338, by Karnataka High Court in workman Pandavapura Sahakara Sakkare Kharkhane, Pandavapura Petitioner V. Presiding Officer, Labour Court Mandya and another Respondents placing reliance on 1970-I-Labour Law Journal 26(SC) 1968—Labour Industrial Cases 3(S. C.), A.I.R. 1958 (SC) 130 and AIR 1964 (SC) 1272. The authorities reported as AIR-1966 (SC) 492, 1973 Labour Industrial cases 1530, 1975 Labour Law Journal page 110 (SC) relating to the question of termination of the Government servant on account of his continued long absence from duty in violation of the provisions of article 311 of the Constitution of India, relied on by the authorised representative of the workman, have obviously no application to the case of a workman under the Industrial Disputes Act and are irrelevant to the point in issues. In 1973(2) Labour Law Journal -254, the long illness of the workman was found substantiated quite contrary to the findings of the facts in the instant case and as such this authority is also besides the point in issue.

Considered from any angle, paragraph 8(g) of the certified Standing Orders of the respondent are legal and valid in all respects, requiring no interference and are as such held to be intravires of the Act.

The result is that the order of automatic termination of the services of the workman is justified and the later is not entitled to any relief. I hold accordingly and return the award with that finding.

Dated the 27th August, 1975.

MOHAN LAL JAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1452, dated 28th August, 1975.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,

Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

The 9th September, 1975

No. 10034-4Lab-75/27644.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the Management of M/s. Kelvinator of India, Ltd., 28, NIT, Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 110 of 1973

Between

SHRI NETAR PAL SINGH WORKMAN AND THE MANAGEMENT OF M/S. KELVINATOR OF
INDIA LTD., 28 N. I. T. FARIDABAD

Present.—

Shri Madhu Sudan Saran Cowshish and Shri Amar Singh, for the workman.
Shri Jaswant Singh, for the management.

AWARD

By order No. ID/FD/73/20781, dated 22nd June, 1973 the Governor of Haryana, referred the following dispute between the management of M/s Kelvinator of India Ltd., 28, N.I.T., Faridabad and its workman Shri Netar Pal Singh to this Tribunal, in exercise of the powers conferred by clause (d) of sub section (1) of Section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Netar Pal Singh was justified and in order? If not, to what relief is he entitled?

Usual notices of the reference having been served on the parties, they appeared before the Tribunal. The workman Shri Natar Pal Singh filed a statement of claim that he had been a permanent employee of the respondent who all of a sudden, on 28th February, 1973, did not allow him to resume duty and convey to him that his name has been struck off the rolls of the employees. He added that he had been absent from duty on authorised leave for 19th February, 1973 and 20th February, 1973 duly sanctioned in his favour and that he applied for grant of more leave with effect from 21st February, 1973,—vide application sent through registered cover to the management and that when he wanted to resume on 28th February, 1973 he was not permitted to enter the premises of the factory.

The management,—vide written reply denied the allegations that the workman had been granted leave for 19th February, 1973 and 20th February, 1973 and that he had applied for leave from 21st February, 1973 onwards. They pleaded that the workman absented himself on 19th February, 1973 and remained absent thereafter with the result that his name was struck off the rolls of the employees under the provisions of the Certified Standing Orders of the company. It was further stated that the workman applied for grant of leave only on 22nd February, 1973 and that this application was rejected on the ground that he had been habitual absentee. A legal objection was raised that the dispute was not covered under section 2-A of the Industrial Disputes Act and as such was not an industrial dispute.

The workman reiterated the allegations made by him in the statement of claim,—vide replication filed by him and controverted the pleas of the respondent. The following issues were framed on pleas of the parties,—vide order, dated 12th April, 1974 by Shri Om Parkash Sharma, my learned predecessor, the then Presiding Officer of the Industrial Tribunal.

- (1) Whether it is a case of self, abandonment of service by the workman concerned ? If so, with what effect ?
- (2) Whether the case is covered by section 2-A of the Industrial Disputes Act, 1947 ? If so, with what effect ?

The management led evidence on the aforesaid issues. They examined Shri Rajinder Singh, Superintendent, Main Assembly M.W. 1 and Shri N. Ahuja, Assistant Secretary Personnel of the respondent Mills as M.W. 2.

Both these witnesses deposed with reference to the record of the respondent brought by them, that the workman remained absent from duty from 19th February, 1973 onwards and that his name had to be struck off the rolls of the employees of the company under rules governing him as a result of his continuous absence from duty from 19th February, 1973 to 28th February, 1973. Each one of them denied that the workman applied for grant of leave on 19th February, 1973. It was, however admitted that he applied for leave only for one day i.e. 22nd February, 1973 and his application was rejected with due information to him in this connection.

The case having been fixed for recording evidence of the workman on 1st August, 1975 he did not appear to pursue his case with the result that the evidence led by the management remained un rebutted. This further indicated that the workman was not interested in pursuing his case and had no objection to the order of the management striking of his name from the rolls of the employees.

Even otherwise I see no reason to disbelieve the evidence of Sarvshri Rajinder Singh and N. Ahuja officers of the respondent who made their deposition with reference to the official record, particularly when the workman declined to appear and the proceedings against him are *ex-parte*.

I thus relying on the evidence of the aforesaid witnesses hold that the workman remained absent from duty without grant of leave from 19th February, 1973 till 28th February, 1973 when his name was struck off the rolls under the Certified Standing Orders, copy whereof is Exhibit M-6. This is therefore, in my opinion not a case of discharge, dismissal, retrenchment or termination of services of the workman by the employer within the meaning of these terms as used in section 2-A of the Industrial Disputes Act. This is on the other hand only a case of abandonment of services by the workman himself.

I, therefore, decide both the issues in favour of the management and hold that the demand made by the workman on the management is unjustified and the reference made as a result thereof is illegal. I return the award accordingly.

The 25th August, 1975

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1413, dated 26th August, 1975

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

The 26th August, 1975

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.